

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

CAP ROCK TELEPHONE COOPERATIVE, INC.)

CC Docket No. 96-158

PETITION, NSD-L-96-2)

Petition to Change the LATA Association of the)

Turkey, Texas Exchange and the Quitaque, Texas)

Exchange from the Amarillo, Texas LATA)

to the Lubbock, Texas LATA)

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COMMENTS
of the
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

The National Telephone Association ("NTCA") submits the following Comments in response to the Commission's Public Notice DA 96-1189, released on July 26, 1996, inviting comments on the above captioned petition for a LATA association change.

NTCA is a national association of approximately 500 local exchange carriers ("LECs"), including the Cap Rock Telephone Cooperative, Inc. ("Cap Rock"). The LECs that make up NTCA's membership provide telecommunications services to end users and interexchange carriers throughout rural America.

In conjunction with its acquisition of the Turkey and Quitaque, Texas telephone exchanges from GTE Southwest (GTE), Cap Rock has requested expedited action on its petition to change the LATA association of the Turkey and Quitaque exchanges from the Amarillo, Texas LATA (546) to the Lubbock, Texas LATA (544). The public benefit to be afforded by the

proposed LATA association change far outweighs the potential adverse effects of a lengthy proceeding. Cap Rock was poised to close its transaction with GTE in June, 1996 and intended to convert the Turkey and Quitaque exchanges to equal access in December 1996.¹ In view of the circumstances presented by Cap Rock, NTCA submits that the Commission's decision to consider the LATA reassociation request via a notice and comment procedure unreasonably and unnecessarily delays the proposed service.

In the past, a BOC and/or independent followed a waiver procedure to reassociate the LATA boundaries assigned to it by the Plan of Reorganization approved by Judge Greene under the Modified Final Judgment (MFJ). It was a process employed by a rural telephone company whenever it needed to reconfigure its network to route its traffic to interconnect with BOC offices in LATAs other than the original LATA assigned to it by the MFJ.² Without the MFJ to govern, the state of the law regarding LATA reassociations is uncertain.³ A question remains as to whether FCC approval is required for the rural telco to re-route its traffic in a way that associates it with a different LATA. Because the Act contains no explicit mechanism for revisions in independent associations, NTCA has recommended the FCC justify the association

¹ Letter from Cap Rock Telephone Cooperative, Inc. to Geraldine Matise, Chief of the Network Services Division, Common Carrier Bureau of 5/17/96, at 2 ("Cap Rock Letter"). Cap Rock planned to begin its equal conversion process by notifying any affected interexchange carriers on June 21, 1996 but needed the LATA association change request granted beforehand. *Id.*

² The process was initiated with a rural telco request of the Department of Justice to recommend to Judge Greene to waive the original LATA boundaries as to the traffic at issue. The waivers were generally approved but the process was often lengthy, usually stretching over several months.

³ The Telecommunications Act of 1996 ("1996 Act") terminated the MFJ.

changes as "modification[s] of the traffic associated with a LATA until a BOC is permitted to provide interLATA services."⁴

Cap Rock has certified to the Commission that it has not received any objections from carriers to be affected by the proposed LATA association change.⁵ Southwestern Bell and GTE, the affected interconnecting local exchange carriers, concur with the LATA association change. Accordingly, NTCA questions whether the Commission's decision to initiate a notice and comment procedure was necessary especially in consideration of the fact that this request is uncontested. The Commission should refrain from initiating notice and comment proceedings for LATA association change requests made by small, rural local exchange carriers if this situation presents itself in the future.⁶

Both Section 271 and its predecessor, the MFJ, were based on the presumption that where a BOC had monopoly control over the origination and termination of traffic in two or more

⁴ Letter from National Telephone Cooperative Association to Geraldine Matise, Chief of the Network Services Division, Common Carrier Bureau of 5/16/96, at 3-4 ("NTCA Letter"). The Commission's authority to sanction the "modification of the traffic associated with a LATA" is sufficiently tied to the authority of the Commission to approve modifications in LATAs by BOCs pursuant the Section 3(43)(B) of the 1996 Act.

⁵ Declaration of Jim Whitefield, General Manager and Executive Vice President of Cap Rock Telephone Cooperative, Inc., June 17, 1996.

⁶ The Commission has chosen a notice and comment period for the LATA reassociation petition that extends at least until September 10, 1996. NTCA suggests that the Commission adopt an expedited procedure to handle these requests in the future. NTCA Letter, *supra* note 4, at 4. NTCA's recommended procedure provides any affected carriers a 10 day window in which to submit objections to the pending LATA association change. *Id.* If no objections are raised, the "modification to the traffic associated with the LATA" will be deemed approved if no action is taken by the Commission within an additional 10 days. *Id.* If the "petitioner" receives objections, it should notify the Commission that the request should be approved regardless or explain any changes to its proposed plan that address the objection. *Id.*

MSAs, it would be able to impede or prevent competition between them. However, rural telephone companies which make up less than 3 percent of the nation's access lines and are spread all over the United States,⁷ do not possess the market power to exert this level of control. Thus, Congress never established a regulatory mechanism to guide the routing of rural telephony traffic to protect interLATA competition. Even the consent decree restrictions on GTE were lifted, lending further support to the presumption that Congress did not intend for the interLATA regulation of independent traffic.⁸

In light of the actions taken by Cap Rock, NTCA respectfully submits that the public interest would be served best by the Commission's expeditious approval of the requested LATA association change.

Respectfully submitted,

NATIONAL TELEPHONE
COOPERATIVE ASSOCIATION

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⁷ There are no rural access lines in the District of Columbia, Delaware, Rhode Island and Hawaii.

⁸ Arguably, GTE, the fourth largest U.S. LEC in 1995, is an independent carrier that could have more than a *de minimus* impact on the viability of competition between two LATAs.

CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Comments of the National Telephone Cooperative Association in CC Docket No. 96-158 was served on this 23rd day of August 1996, by first-class, U.S. Mail, postage prepaid, to the following persons on the attached service list:


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